STATE VERSUS LOCAL REGULATION

By Stiles P. Jones,

Secretary, The Voters League, Minneapolis, Minn.

Regulation of public utilities by the state, the popular program in the regulation field during the last few years, is receiving some serious setbacks of late.

The alleged Tammanyizing of the New York state commission under Governors Dix and Sulzer, and the later demoralization of the up-state commission through the influence of state politics, have called public attention to these bodies with such effect that they will be of little use in securing legislation of this character in the newer states. They are no longer assets to the state regulation propaganda. They are of more value, in fact, as examples of the possibilities for evil that the system contains. New Jersey and Maryland, the only other eastern states having state regulation in effect long enough to afford any test at all of its worth, have done little and some of that little so badly that they are not useful for "boosting" purposes, especially in states where there is a fair proportion of men of democratic minds. In California, where they are apparently doing some things well in this field, the public utility law is of such a character as to afford no fair comparison, as it gives communities the right of home rule, and has no city of considerable size as yet under its jurisdiction.

But there remains Wisconsin, which with New York was the pioneer in the movement for state regulation of public utilities. The system has been in effect there for almost seven years, ample time for a fair test of its merits. The experience of Wisconsin has been used everywhere to buttress the claims of the advocates of the state regulation principle. The most extravagant statements have gone forth of the success of the Wisconsin system of regulating its public utilities. Hardly a voice has been raised in opposition. Legislatures in many states have been induced to adopt similar legislation on the strength alone of the Wisconsin claims. The Wisconsin act has been a popular model for the laws of nearly all of the states that have adopted such legislation.

Now comes the Minnesota Home Rule League with an interesting story of an investigation of the results of state regulation in Wisconsin which, if it stands the test of controversy, will make it more difficult hereafter to use that state as an example for other commonwealths in this regard. The old claims will at least no longer pass unchallenged. The league puts the Wisconsin system under a pretty severe fire. The indictment is strong and comprehensive and uncompromising.

The inspiration for the league's investigation came from the controversy in the legislature of 1913 over the question of adopting a state regulation program for Minnesota. This was pushed strenuously by the governor, backed by the state machine, and behind the state machine the public utility companies of the three cities, which, with the big brewing companies and the job-holders, constitute the main gear of the state machine.

A bill modeled closely on the Wisconsin act was introduced and pressed. The progressives in the legislature were not particularly opposed in theory to the state regulation principle. On the contrary, they were rather disposed in its favor on account of its associations. But when the character of the bill and its chief support became apparent they swung hard and put the bill to sleep. The governor then in reprisal vetoed a couple of progressive bills: one whose purpose was to compel physical connection of telephones for the convenience of the farmer folks, the other to give the city of Minneapolis power to make rates for the electric monopoly of that city. And then the war was on. The governor, at the conclusion of the session, promptly gave notice that he would call a special session for later in the year to pass a state regulation act. With the purpose of blocking the governor's program, the men most prominent in the movement to defeat the state regulation bill at the regular session organized under the name before mentioned, and began probing for information on the subject. Facts regarding the practical results of state regulation were the prime necessity, and, as the first step, the league first proceeded to comb Wisconsin for information of the workings of the system in that state, then to make a long-distance study of the results in New York, New Jersey and Maryland.

This investigation covered more than eight months, and the results are contained in the matter before referred to and now just

published. This represents the first thoroughgoing critical study yet made of the situation in Wisconsin. Departing from the usual custom the league did not stop with getting estimates from the railroad commission of the value of its own work, nor with taking the word of the commission's biased friends, but studied closely official reports and court decisions, and then went to the cities of Wisconsin for direct evidence. In its studies of the subject it sought to ascertain the following facts: First, the inspiration for the present popular movement for state regulation; second, the character of the acts in the several states; third, the make-up of the commissions; fourth, the results of state regulation as expressed in rates and service, on the local politics, on the citizenship of the local communities and on the material welfare of the public utilities.

The evidence in its general application to the United States plainly clinches the following big facts:

1. That the latter-day inspiration for state regulation comes from the public utility companies to be regulated, reinforced by an element of the so-called progressives in some states who have been made to believe that state regulation is a progressive institution.

2. That the public utilities have sought to write the laws and have done so in some cases, and modified the laws in others; have used their influence upon the appointing power to name men of "right" minds on the commission; have sought to influence the attitude and to control the action of the commissions after appointment.

3. That with few exceptions the men occupying positions on state commissions had no technical or special qualifications for the work, and in most cases were selected for services past or prospective to the appointing power, and in other cases were men with public utility or allied affiliations, or men known to have a strong corporation or property bias.

4. That state regulation has not given the people the benefit of as favorable rates, nor as good service, as many cities with home rule powers have secured for themselves.

5. That it has not eliminated the public utilities from local politics, but on the contrary has compelled them to become more active then before.

6. That the effect on local citizenship has been disastrous, weakening the community in initiative, self-reliance and capacity for self-government.

7. That in the valuation field, both for rate making and purchase, the state commissions have shown a strong leaning toward the interests of the utility companies.

8. That the public utilities have found that state regulation serves their purposes admirably; that it protects them from unreasonable rates, assures them liberal dividends, imposes no unreasonable service obligations, by means of the indeterminate permit assures the permanency of their investments with opportunity to get out in the event of purchase by the city at a price considerably above the legitimate investment in the property, increases the market value of their securities, and, finally, in effect, through state supervision of bond and stock issues, guarantees the integrity of their securities.

The above indictment is general against the result of state regulations where it has been fairly tried out, with reservations in the case of California. As to the results in Wisconsin, the league testifies to the integrity and high personal character of the members of the railroad commission. Its criticism is directed against the essential principles of the public utility act and its administration by the commission. The attitude of the commission in the matter of charges for service is fairly shown in the study made last year for the league of the commission's reports for a period down to March, 1912, the date to which the printed reports come down. It contains a report of 134 cases. Of this number 38 were telephone cases. No steam railroad cases were included. The summary follows:

Wisconsin cities and the public generally asked the Wisconsin commission in charge of public utilities for reductions in 39 cases. Substantial reductions were granted in but 3 cases, and small or nominal reductions in 8 additional cases.

Public service corporations of Wisconsin asked the commission for increase of rates in 52 cases. Substantial increases were granted in 43 cases and small increases in 7 additional cases. In other words, some increase was granted in nearly every case where it was asked. Some were granted when not asked for.

Cities or the public asked for better service in 32 cases. Better service was ordered in 20 cases, in some of these cases conditioned upon increased rates.

Public service companies asked for relief of various kinds in 10 cases. It was granted in 9 cases.

Citizens or cities asked relief in 10 cases; granted in 5 cases.

To express the result in another way, the public was successful before the Wisconsin commission to a substantial extent in but 7 per cent of the cases

brought by it for rate reduction, and was given even the slightest relief in but 29 per cent of the cases.

Public service corporations were successful to some extent in more than 96 per cent of the cases they brought before the commission for rate increases, and were fully or substantially successful in more than 82 per cent of the cases where rate increases were asked for.

In a term of five years, during which the trend of public service charges was so strongly downward, the trend under the Wisconsin commission was uniformly upward.

The severest test of the state regulation system in Wisconsin is found in its handling of the problems of the cities. It is here that its failures are the more manifest, and the consequences the more serious. The cities of Wisconsin furnish many interesting instances—Milwaukee, Superior, Madison, La Crosse, Sheboygan, Racine, Oshkosh and others. The gas, street car and electric utilities in the Wisconsin cities have failed to meet reasonable public demands and the railroad commission has been unequal to the task of compelling them to. The commission has often moved with extreme deliberation. Its orders, when they really meant anything, have been ignored by the companies or appealed to the courts and litigated to the bitter end. Its methods have distinctly invited litigation, with the consequent delay and large expense to both parties.

The claims of the commission of the large savings to consumers of gas and electricity and patrons of street railway companies in the cities of Wisconsin are in part only savings on paper. Many of the estimated reductions made during the past year are held up awaiting the action of the court of last resort, with the people paying the old rates in the interim. Yet, it has been persistently told how the companies respect the decisions of the railroad commission, so unassailable are they as to law and facts.

The commission's policy of discriminating charges for gas and water has put it under severe criticism. In this respect it has overemphasized scientific methods at the expense of the larger welfare of the community and has at the same time determined matters of broad public policy which by every right the community should determine for itself. Milwaukee furnishes an instructive illustration. There was in effect here a step rate system of charging for gas, with a maximum charge of 75 cents, dropping down to 50 cents in five steps. Petitioned by the city to reduce the price to the small consumer, the commission, following an investigation covering

two years, made no change in the schedule except to reduce the price to the class of largest consumers to 45 cents. This class constitutes but 2.68 per cent of the total number of consumers. They had asked for no reduction in charges. The claims of the others received no recognition whatever from the commission.

Some months later, in the Waukesha case, the commission took similar action—reduced the price of gas 10 cents per thousand feet to four classes of consumers, constituting 6 per cent of the total number of users of gas, and passed up the claims of the other 94 per cent, those who were paying the top price.

It is one of the claims of the advocates of state regulation that under this system special rates and privileges are abolished. This is just the reverse of the facts in Wisconsin. It is the Wisconsin Railroad Commission that has developed to the highest point the classification of consumers of utility products. This is not the kind of regulation which the Wisconsin public expected when state regulation of public utilities was established, and many sharply question the wisdom of it, despite the commission's claim of scientific accuracy for its system. They contend that if they are to have such a system of discriminatory charges it should be determined by the public itself and not by a state commission sitting at Madison.

Later in the same year the railroad commission issued a tentative order in the matter of water rates in Milwaukee in which it applied the same discriminatory principle. Such a furious protest went up from the people that the commission withdrew its order—one of the rare instances when it has shown a disposition to yield in any way to public sentiment.

Street railway service in Milwaukee has been atrociously bad for many years. The commission has made several half-hearted attempts to better conditions. Its latest order, issued in 1913, six years after the city filed its original complaint, on its face gave promise of some relief. It made a fairly adequate standard of service for rush hours. The commission then went back to Madison and left to the citizens the enforcement of the terms of the order through the usual channels of official complaint to the commission. There is no improvement whatever in the situation, and no other result could be expected from such methods. In Minneapolis, the city council had previously adopted a quite similar order. Unlike the Wisconsin commission, it followed it up vigorously, made

arrests, secured convictions and brought the company to terms. The council keeps a man on the job all the time checking up conditions, and when a remedy is needed promptly provides it.

In the battle for lower street railway rates in Milwaukee there was the same vexatious delay in getting action from the commission, and then the inevitable litigation in the courts. After waiting seven years for results the street railway patrons received the benefit of a reduction from 12 tickets for 50 cents to 13 tickets for 50 cents. But this reduction had a string tied to it. The reduction is expressed in the form of a little black coupon which, if carefully treasured until the time when the United States supreme court adjudicates the case will be good for a trip over the line. Compare such a meager and uncertain result with what Cleveland, Columbus, Toledo and Detroit, with 3-cent fares, have secured for themselves through the direct action of their city councils!

The experience of Madison, the home of the railroad commission, clinches one big vital fact of state regulation in Wisconsin—that the public utility act, as enforced by the commission, protects the existing utility monopoly in a community no matter how inefficient its service or how excessive its charges. The people of Madison get their electric service from an antiquated steam plant, with unlimited cheap hydro-electric power available at the city limits, and pay rates based on cost of production under steam plant conditions.

Now why does the commission stand in the way of the citizens of Madison in their attempt to secure lower light and power rates? Simply because the commission has a theory to sustain: the existing monopoly must be protected. This instance emphasizes the fact that the public utility law, like all legislation conferring monopoly privileges on private corporations, not only does not secure economy, but encourages extravagance. How different this arbitrary attitude of extreme devotion to a theory with the practice of the California commission, and how different the results!

To secure its rights and give the city opportunity for industrial expansion the citizens of Madison have now organized, employed experts and stripped for battle. The commission, long hostile to the efforts of the Madison community to secure its rights, now shows a disposition to yield to some extent.

Baraboo, La Crosse and other cities furnish other instances of this attitude of slavish devotion to a monopoly theory at the expense of the public interests and in violation of the conservation so strongly upheld by other departments of the state. Wisconsin cities under the Wisconsin monopoly theory have but two alternatives—to buy from the local monopoly, or purchase its property, no matter how unsuited to its use or how obsolete its equipment, at a price named by the railroad commission, and this price based on the jug-handled theory of the reproduction value of the property.

The city of Superior has furnished exceptional opportunities for the study of the practical results of state regulation, together with comparative results, for just across the bay, in Minnesota, lies Duluth, operating under a home rule charter and with large powers to work out its own public utility problems.

Public utility conditions in Superior have been unsatisfactory all along the line—chronic high rates and poor service. During the six years between 1905 and 1911, the charge for gas was $1.40 per thousand feet. Over in Duluth, where home rule prevails, the price for the same years, for the same identical gas, coming from the same source, was 75 cents per thousand feet. Subsequent reductions in Superior were made voluntarily by the company. The railroad commission has been of no other assistance to the community in this regard than to confirm the company's voluntary reductions.

In 1912 the commission ordered a reduction in street railway rates from 5 cents straight to six fares for 25 cents. The company promptly appealed to the courts, where the case now rests. It is significant that Superior has today less street railway trackage in operation than it had twenty years ago, while the population has doubled in that time. The company refuses to make any extensions; the city is helpless to do anything for itself, and the railroad commission "sits tight" down at Madison. The sentiment of the Superior community toward this utility is shown by the fact that a year ago it voted seven to one to ask the legislature for authority to take over the property for municipal operation. This was granted, and the people will this spring vote on the direct issue of municipal ownership.

In Duluth the gas and water utilities are eliminated from local politics. The public service companies in Superior remain active

factors in city politics the same as before the state commission came into existence. In fact, they come pretty near to dominating the politics of that city.

In the foregoing I have only touched upon a few of the problems of the cities of Wisconsin, enough, however, to indicate some of the perplexities of the situation in that state and to show how the public utility act, as administered by the railroad commission, has failed to secure satisfactory results in rates and service. These constitute the important test of the system in the popular mind. Some of the principles enunciated by the commission in its application of the utility law and its methods in reaching conclusions as to the proper basis for rates and service seem to me to be the more vital consideration, and the one which shows more clearly the fundamental defects of the law and its operation.

Of prime importance is the tendency of the commission to take upon itself constantly more power and responsibilities. Already overburdened with work and complaining constantly of being undermanned, the commission encouraged the last legislature to add to its duties the administration of the water power act and the "blue sky" law. The commission's work has developed to such a point that it is compelled to delegate its duties as a commission to individual members. This is a significant and dangerous departure from the original purpose of the act and the past practice of the commission. Even cases of large importance are now decided by a single member. Instead of encouraging communities to assume some responsibilities for the settlement of their local utility problems, the commission persistently forces upon them the opinion that they are not competent to handle such matters, and takes from them all direction and control, even down to the smallest detail.

A dangerous development in this connection is the growing disposition of the commission to write legislation. In practical effect it controls the action of the legislature in the public utility field. The legislative body is hardly anything more than a rubber stamp for the commission. It shapes recommendations of the executives as well as writes legislation. It defeats measures initiated by municipalities designed to give them power to deal with bad local situations.

The operation of the indeterminate permit in Wisconsin is one of the things that has inspired much criticism. The results under

the interpretation of the railroad commission have been as follows: (1) It has prolonged the life of privately owned utilities through its obstructive effect on municipal ownership. (2) It has entrenched the companies in their monopoly grip upon the cities, with the result of continued excessive charges and inefficient service. (3) It has made it impossible for municipalities to secure cheaper or better street light service through the construction of municipal plants. (4) It has nullified existing contract obligations between cities and utility companies, often to the great advantage of the companies.

Valuation of public utility properties for rate making or purchase purposes has been another of the big functions of the Wisconsin commission. The attitude of the commission in this regard has been a large factor in determining rate and service results. Here again the commission has made itself subject to severe criticism. It has carried to the extreme limit the theory of reproduction value. It has put such emphasis upon this questionable theory as often to do violence to every sense of justice and fair dealing toward the public. The result has been that cities have been compelled to pay fancy prices for out-of-date plants with obsolete equipment, including liberal "overhead charges," property that came to the company through gift of consumers or the city, "going value" to a large amount, in purchase propositions large sums for paving over mains paid for by the public and which were never disturbed—in the Oshkosh case $58,000, in the Appleton case $17,000—and, as a final refinement of valuation to further fatten utility property values, an item described by the commission in the Milwaukee gas case as allowance for "unusual engineering skill and foresight." This item is in effect the capitalization of the business sagacity of a public utility company expressed in wise and economical construction of its property. The commission refuses to go on record as to the exact amount represented by this item, but it is certainly a substantial sum.

As evidence of the practice of capitalizing public donations note the following from the decision of the commission in the Ashland water works case:

> For purposes of proceedings like those herein, the utilities law does not inquire into the manner in which property of utility corporations devoted to the public use was originally obtained, whether by purchase, inheritance, gift or theft. The law simply compels the commission to value this property,

and to consider this valuation in taking official action with respect to rates and service. It therefore follows that the value of the donated land must be included in the value of the property devoted to the public use.

In the matter of including service connections paid for by the consumers, the commission declared in the same case: "from a legal point of view, the same position will doubtless have to be taken." In other words, the land donated by the city and the service connections paid for by consumers are used to pad valuation, while a rate for service is made that will secure a fair return to the company on such valuation. If there was any record of the commission seeking through legislative amendment to remedy this atrocious situation the case would look better.

In its treatment of going value, the commission includes this item as part of the capital investment of the company upon which the public must pay returns in perpetuity. In effect, it capitalizes the company's early losses, puts upon the public all the hazards of the business, and assures the utility of liberal returns on its investment from the very beginning of operation. The commission refuses to express going value in definite terms. The public has no means of knowing to what extent this factor has been included in the value of a utility. The commission contents itself with stating that it "has considered" going value in reaching its valuation. The Wisconsin supreme court upholds the correctness of this attitude. Note the logic of this situation: The railroad commission says it cannot express going value in definite terms. The supreme court agrees with it. Now, if the commission does not know how much this item should be, and the court does not, how can it be included in the valuation?

Again, the uncertainty and vagueness that characterize so many of the commission's decisions are well illustrated in this case by the inability of the Wisconsin circuit and supreme courts to agree as to whether the commission had fixed the going value or not. The former said it had, the latter that it had not. Apparently the Wisconsin courts are burdened with the task of deciphering what the commission means in addition to reviewing the legality of its orders. And to make it certain that this matter of going value never shall be cleared up, the supreme court, in the Appleton case, effectively stops future inquiry by declaring: "that the mental processes by which the final results (the valuation) are reached by a

commissioner, and the relative importance given by the mind to each element, as well as the legal or economical principles deemed by him to have a bearing on the result, are not subjects upon which a commissioner can properly be examined."

One of the popular claims for the public utility act is that it has taken the utilities out of city politics. This does not appear to be true to the facts. In all of the large cities of the state acute utility problems are demanding solution, and the leading questions are utility issues. There is much political unrest in the cities of Wisconsin; and public utility issues are the main contributing cause. To secure relief from intolerable conditions, city officials have had to take the initiative, and, when the commission fails them, appeal to the courts. Finally, unable to secure relief from any other source, they start agitating for public ownership. This compels the utility companies to go into politics harder than ever before in order to control the situations and protect their investments. In practically every municipality where the utility problems have been acute, the big local political battles have been fought over these questions.

Three notable principles marking progress in government and development of civic ideals are now permanently identified with the administration of government in the United States. Growth in genuine progressiveness may be measured by the degree of acceptance of these principles as fixed ideals of government. They are: First, civil service methods in the conduct of public business; second, conservation of the public resources; third, municipal ownership of public utilities. Yet, strange as it may seem, in Wisconsin, recognized as the leader of all the states in progressive policies, these now generally accepted and applied principles of progressive government are rejected by an institution loudly heralded the country over as the most progressive feature of the administration of this progressive commonwealth. The railroad commission has admittedly led all the other commissions of the state in evasions of the terms of the civil service act. In its interpretation of the indeterminate permit it has discouraged the development of available hydro-electric power and its use in the cities to displace steam plants. Its attitude toward municipal ownership, other than water works, has been distinctly obstructive at all times, on the theory that municipalities are not competent to perform such duties of city administration. Outside of water plants, only four private utility

properties have been municipalized during the seven years that the act has been in effect, and only one of these had a valuation to exceed $50,000.

The most significant fact to chronicle in concluding this article is the recent change in the attitude of the Wisconsin public toward the railroad commission and the public utility act. There is a rapidly rising tide of protest against the results and tendencies of the system. The public, long so acquiescent in the work of the commission, and so willing to accept its own estimate of its value to the state, are now studying the result for themselves and questioning sharply its program and policies. A condition of inquiry and unrest pervades the whole state.

The people in the past few years have seen their taxes go up by leaps and bounds, utility rates increasing, small improvement or none at all in service and the power to obtain relief for themselves denied them. A day of reckoning now seems to be at hand. A state-wide movement, non-partisan and inclusive in character, starting from Madison, the home of the commission, is rapidly gaining headway and seems likely to sweep the state and force a new political alignment in Wisconsin.

It is an unfortunate complication that others of the state commissions are involved in this controversy; also that many of the old stand-pat elements in Wisconsin are enlisted in the fight and may find in this contention the opportunity so to discredit the Wisconsin progressive movement as to wedge themselves back into power. It is equally unfortunate that the railroad commission could not have earlier discovered the rising dissatisfaction with its methods and secured legislation to relieve it.

Discontent over the results as seen in rates and service in the public utility field and rapidly growing tax burdens constitute only a part of the cause for the present situation. The unrest is more deeply seated and more fundamental. The people are becoming conscious of the rapidly growing power of the system over the politics and the policies of the state. The conviction is gaining with them that the commissions are ruling the people instead of serving them; taking away instead of protecting their liberties; destroying instead of conserving self-government—all the logical results of an irresponsible bureaucratic system.

The railroad commission, long so arbitrary in its attitude and so disregardful of public opinion, is bending to the storm in an apparent effort to mollify public sentiment. This is seen most significantly in the recent Waukesha gas case, where the commission changes its attitude radically in the matter of protection of utility monopolies in the control of the local fields. The commission has steadfastly refused to give communities relief from the oppressive rates of electric plants operated at a low efficiency or under conditions of obsolete equipment, and resisted all efforts of the communities to obtain it for themselves. The commission has so interpreted its duty under the Wisconsin public utility act. In this case it plainly reverses itself, declaring that it is not the intent of the law to make an indeterminate permit entirely exclusive; and that the commission may allow competition where the conditions warrant it. This will be welcome news to Madison and other cities long struggling with the problem of securing proper rates from a monopoly entrenched utility.

Again, the commission has authorized the issuance of nearly one billion dollars of securities of public utilities. It has consistently extolled the supervision of securities as one of the crowning glories of the Wisconsin act. Now comes Chairman John H. Roemer and sounds a warning against this feature of the law. He declares that it contains elements of grave menace to the public interests, involving what in fact may amount to state guaranty of the integrity of the securities authorized and possibly of all previous issues.

With the commission reversing itself on vital phases of the regulation act in such rapid sequence, what is the logical end? Can it be anything less than a return to the wholesome principles of home rule, leaving to the people of the municipalities to determine for themselves questions that concern only themselves; working out their local problems in their own way free from outside interference; and in the process acquiring self reliance and capacity for self-government. This is the foundation principle of the American system of democratic government, and the only system which will assure permanent conditions of honesty and efficiency in administration and genuine government by the people.